

DE MAIO & HUGHES, L.L.C.

Attorneys and Counselors at Law

Hon. Anicello De Maio (1878-1945)*

Luigi Biaggio Maria De Maio (1879-1967)*

John Henry De Maio (1912-1967)

Hon. Thomas J. Hughes (1912-1996)

Louis Victor De Maio (1916 - 1965)

Luigi P. De Maio

330 East 30th Street
NEW YORK, N.Y. 10016

TELEPHONE: (212) 888-8300

FACSIMILE: (212) 889-1591

E-mail: luigidemaio@netscape.net

Columbia County Office:

2540 State Route 82

Ancram, NY 12502

Tel: (518)329-2962

Faximile: (518) 329-0852

*not admitted in New York

December 4, 2007

MEMO ENDORSED 12/4/07

1. If a party or its counsel is not represented, just relate to who it represents and that person and his/her attorney w. regard to its subject or who else is involved.
2. What is involved in "our business" as "regular rule" - my usual or planned meeting or approach to it is not necessary. Any party/counsel can provide notes during their presentation if they so desire.
3. If you don't do E/FAX, we are willing to agree to fax or e-mail.
4. If you don't do E/FAX, we are willing to agree to fax or e-mail.

SO ORDERED,

Andrew J. Peck
Hon. Andrew Jay Peck
United States Magistrate Judge

BY FAX

Gentlemen:

Pursuant to Rule 26 (f) we are required to confer on a Plan for Discovery. I have spoken

each of you for your approvals and comments. Despite several requests, I have heard nothing whatsoever from Mr. Lonergan.

I remind all parties that the Magistrate has ordered that discovery be complete by February, 2008. Given the following, I doubt that that date will be able to be met but I believe that we must make a good faith effort to comply with the schedules as they now exist.

RULE 34 REQUESTS FOR PRODUCTION OF DOCUMENTS:

Plaintiff has already served and filed Requests for Production of Documents directed to all defendants. The time within which to comply with those Requests is running.

I HAVE THREE TIMES REQUESTED MR. LONERGAN TO ADVISE (A) WHEN HE WILL COMPLY WITH THE RULE 34 REQUESTS, (B) WHETHER HIS INITIAL DISCLOSURE OF HAVING NO DOCUMENTS WHATSOEVER IS ACCURATE AND (C) WHEN MR. RUBIN WILL APPEAR FOR DEPOSITION. TO DATE, I HAVE HAD NO RESPONSE. ON 11/29/07 I SENT MR. LONERGAN A COPY OF THE INITIAL DRAFT OF THIS LETTER AND HAVE HAD NO RESPONSE THERETO. I SENT AN AMENDED DRAFT OF THIS LETTER INCORPORATING MR. PHELAN'S COMMENTS THIS DATE. THIS LETTER INCORPORATES MR. PHELAN'S FURTHER COMMENTS AND AGAIN INVITES MR. LONERGAN TO RESPOND.

I AM ADVISING MR. LONERGAN THAT I WILL BE REQUIRED TO MAKE APPLICATION TO THE MAGISTRATE IN THE EVENT THAT A RESPONSE IS FURTHER DELAYED.

The Higgins defendants have already served a Rule 34 Request dated November 24, 2007 to which responses are due December 29, 2007. Plaintiff will respond well prior to that date.

Plaintiff has already prepared all documents which were produced in the State action, however, neither Mr. Lonergan or Mr. Blackman have requested them.

DEPOSITIONS OF PARTIES:

Plaintiff has already served Notices to Take Depositions of defendants Rubin and Blackman.

By reason of his health, Mr. Blackman has requested that his deposition be taken in Houston, TX and Mr. Phelan and I have agreed to do so.

Mr. Lonergan has not advised as to the Rubin deposition.

Defendants have not yet served any Notices to Take Deposition of any parties. Mr.. Phelan has advised that he would like to take the depositions of:

Jozef Anavian
Rita Zahabian
Michael Donelly
Sergio Sidou
Leyla Anavian
Marcial Layani
Any expert designated by the plaintiff
Any employee or other person anticipated to testify for plaintiff at trial

but has not yet served any subpoenae or Notices to Take Deposition.

With the exception of Layani and Anavian, the above are all third-party witnesses. Plaintiff has no control over Mr. Layani. Messrs. Sidou and Donelly are located in Brazil. Leyla Anavian resides in Israel.

I have agreed with Mr. Phelan to cooperate in attempting to secure the appearance of these witnesses to the extent that I am able to do so. Contemporaneously with this letter, I have requested Mr. Anavian to determine the availability of each of the above and to communicate with me whether they are prepared to appear without subpoena and under what circumstances.

Plaintiff intends to take the deposition of the Higgins defendants but has agreed with Mr. Phelan to await the document productions listed below prior to noticing those depositions. In addition, it would be less wasteful if those depositions were taken after the production of all the bank documents and Boston Bay documents.

THIRD-PARTY DEPOSITIONS:

Plaintiff has already served Subpoenae Duces Tecum on the following. Documents and deposition initially scheduled on the dates indicated:

| | Documents | Deposition |
|----------------------|---------------------|------------|
| Sovereign Bank | Working on them now | |
| Boston Bay Brokers | 12/20/07 | 1/11/08 |
| Banco Safra | 12/20/07 | 1/9/08 |
| Merchants Bank of NY | 12/20/07 | 1/9/08 |
| Bank of America | 12/20/07 | 1/9/08 |
| Gulf Bank | 12/20/07 | 1/15/08 |

Sovereign Bank has already communicated with us advising that they are amassing the documents and will advise when they are available for inspection and copying. I will advise all counsel of that date.

Boston Bay Brokers initially agreed to produce the records but I was advised last

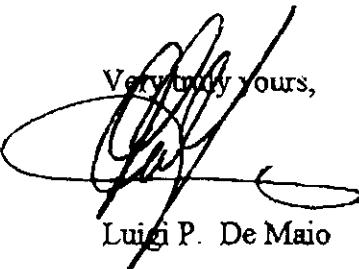
Wednesday that it is demanding a second subpoena. I served and filed said subpoena last week.

Banco Safra, Merchants Bank and Bank of America have not yet communicated with me but the subpoena to each requires the documents by December 20, 2007 and schedules the depositions for January 9, 2008 at 10 a.m., 12 noon and 2 p.m. of that day.

NOTICES TO ADMIT

Mr. Phelan has advised that he intends to serve a Notice to Admit regarding the aspects of the matter which deal with the wiring and receipt of funds. I suggest that he await the preparation of the Pre-Trial Order and we can include all such items therein together with whatever other factual matters are not in dispute.

By copy of this letter I am advising Magistrate Judge Peck of the above and the status of discovery to date.



Very truly yours,

Luigi P. De Maio

cc:

BY TELECOPIER (212)805-7933

Hon. Andrew Peck
United States Magistrate Judge
United States Courthouse
500 Pearl Street
New York, NY 10007

FAX TRANSMITTAL SHEET

**ANDREW J. PECK
UNITED STATES MAGISTRATE JUDGE
UNITED STATES DISTRICT COURT**

Southern District of New York
United States Courthouse
500 Pearl Street, Room 1370
New York, N.Y. 10007-1312

Fax No.: (212) 805-7933
Telephone No.: (212) 805-0036

Dated: December 4, 2007

Total Number of Pages: 5

| TO | FAX NUMBER |
|----------------------------|-------------------|
| Luigi P. De Maio, Esq. | 212-889-1391 |
| John J. Phelan, III, Esq. | 212-315-3028 |
| Lawrence R. Lonergan, Esq. | 212-366-6950 |
| Noel J. Blackman | 281-256-9433 |

TRANSCRIPTION:

MEMO ENDORSED 12/4/07

1. If a party or its counsel is not cooperating, just schedule and notice the deposition and that person will have to attend with no input into the scheduling or the depo can go on without him.
2. The Court is invoking the "one business day" response rule – any email or phone call must be responded to by next business day.
3. Any party/counsel who fails to notice discovery can go without it.
4. If you don't do RFAs and are unable to agree at time of the PTO, you are at risk.

Copy to: Judge Barbara S. Jones